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ATTORNEYS FOR DEFENDANTS EVE-USA, INC. AND Emulation  
and Verification Engineering, SA

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

MENTOR GRAPHICS CORP.,

Case No. 3:10-cv-954-HU

Plaintiff,

vs.

**DEFENDANTS' AMENDED  
ANSWER AND  
COUNTERCLAIMS**

EVE-USA, Inc. and Emulation and  
Verification Engineering, SA,

**[REDACTED PUBLIC VERSION]**

Defendants.

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Defendants provide the following Answer and Counterclaims in response to the First Amended and Supplemental Complaint of Plaintiff, Mentor Graphics Corp. (“Mentor Graphics”), Defendants, EVE-USA, Inc. and Emulation and Verification Engineering, SA, (“EVE-USA” and “EVE SA” respectively) admit, deny, and allege as follows.

**Parties**

1. Defendants lack sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

2. Defendants admit that EVE-USA is a corporation duly organized and existing under the laws of the state of Delaware. Defendants admit that EVE-USA’s principal office is located in San Jose, CA.

3. Defendants admit that EVE SA is a French corporation. Defendants admit that EVE SA is headquartered in Palaiseau, France.

4. Admitted.

5. Denied.

6. Defendants admit that their products include a “ZeBu” series of emulation systems. Defendants lack sufficient information to determine what meaning plaintiff attributes to the remaining assertions in this paragraph, and on that basis denies them.

**Jurisdiction and Venue**

7. Defendants admit that this action arises under 35 U.S.C. § 271.

8. Defendants admit that this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

9. Denied.

10. Denied.

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11. Denied.

12. Denied.

13. Denied.

14. Defendants admit they have provided product support for ZeBu products that were located in Oregon at the time. Defendants deny all remaining allegations.

15. Denied.

16. Denied.

17. EVE USA admits that it has agreed to provide maintenance and support services for a Zebu Server that is currently located in Oregon. Defendants deny all the remaining allegations.

18. Admitted as to EVE USA. Defendants deny all remaining allegations.

19. Denied.

20. Denied.

#### **General Allegations**

21. Denied.

22. Admitted.

23. Defendants lack sufficient information to form a belief as to the truth of the allegations recited in this paragraph, and on that basis denies them.

24. Denied.

#### **Count I - Alleged Patent Infringement**

25. Defendants incorporate by reference paragraphs 1 through 24 of this Answer, as if fully set forth herein.

26. Denied.

27. Denied.

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28. Denied.
29. Denied.
30. Denied.
31. Denied.
32. Denied.
33. Denied.

#### **Mentor Graphics Prayer for Relief**

Defendants incorporate by reference all preceding paragraphs of this Answer as if fully set forth herein. Defendants deny that plaintiff is entitled to any relief sought in plaintiff's Prayer for Relief.

#### **Jury Demand**

Defendants demand a jury trial for all issues so triable.

#### **DEFENDANTS AFFIRMATIVE DEFENSES**

##### **First Affirmative Defense: Non-Infringement**

1. Defendants are not infringing, and have not infringed, any claims of the '962 patent.

##### **Second Affirmative Defense: Invalidity**

2. One or more of the claims of the '962 patent are invalid for failure to satisfy the conditions for patentability set forth in 35 U.S.C. §§ 101, et. seq.

##### **Third Affirmative Defense: Failure to State a Claim**

3. Plaintiff's First Amended Complaint fails to state a claim upon which relief can be granted.

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**Fourth Affirmative Defense: No Injunctive Relief**

4. Plaintiff's demand to enjoin defendants is barred, as plaintiff has suffered neither harm nor irreparable harm from defendants alleged actions.

**Fifth Affirmative Defense: Limitation on Damages**

5. Plaintiff's pre-lawsuit claim for damages are barred, in whole or in part, for failure to comply with 35 U.S.C. § 287.

**Sixth Affirmative Defense: Unclean Hands**

6. The claims alleged in the First Amended Complaint are barred, in whole or in part, by the doctrine of unclean hands.

**Seventh Affirmative Defense: Prosecution History Estoppel**

7. Mentor Graphics is estopped from construing any valid claim of the '962 patent to cover or include, either literally or by application of the doctrine of equivalents, any product or service manufactured, used, imported, sold or offered by defendants because of admissions and statements to the United States Patent and Trademark Office during prosecution of the application leading to the issuance of the '962 patent.

**Eighth Affirmative Defense: No Willful Infringement**

8. Mentor Graphics is not entitled to enhanced or increased damages for willful infringement because defendants have not engaged in any conduct that meets the applicable standard for willful infringement. Mentor Graphics has also failed to adequately plead or state a claim for relief for willful infringement.

**Other Affirmative Defenses**

9. Defendants reserve all other affirmative defenses pursuant to rule 8(c) of the Federal Rules of Civil Procedure, the Patent Laws of the United States, and any other defenses at law or in equity, that now exist or in the future may be available based on discovery and further factual investigation in this case.

### **COUNTERCLAIMS**

Defendants and counter-plaintiffs EVE-USA, Inc. and Emulation and EVE SA (collectively, "EVE") hereby allege the following counterclaims against plaintiff and counter-defendant Mentor Graphics:

#### **Parties**

1. EVE-USA, Inc. is a corporation organized and existing under the laws of Delaware, with a principal place of business at 2290 N. First St., Suite 304, San Jose, California 95131.

2. Emulation and Verification Engineering, SA ("EVE SA") is a French corporation with a principal place of business at 2 bus, Voie La Cardon, Parc Gutenberg, Batiment B, Palaiseau France 91120.

3. Mentor Graphics is a corporation organized and existing under the laws of Oregon, with a principal place of business at 8055 SW Boeckman Road, Wilsonville Oregon 97070.

#### **Jurisdiction and Venue**

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4. Plaintiff and counter-defendant Mentor Graphics' original complaint in this action arises under the patent laws of the United States.

5. Defendant and counter-plaintiffs EVE's counterclaims arise under the laws of the State of Oregon and the State of California.

6. This court has supplemental jurisdiction over EVE's counterclaims pursuant to 28 U.S.C. § 1367, because they are so related to Mentor Graphics claims' under the patent laws of the United States with original jurisdiction, that they form part of the same case or controversy under Article III of the United States Constitution.

7. The Court has personal jurisdiction and venue over Mentor Graphics because it consented to personal jurisdiction and venue by filing the Complaint and First Amended and Supplemental Complaint in this action.

**Count I - Intentional Interference with Economic Relations (California and/or Oregon)**

8. [REDACTED]

9. In March 2006, Mentor Graphics filed a patent infringement lawsuit against EVE-USA and EVE SA in the United States District Court for the District of Oregon.

10. [REDACTED]

11. [REDACTED]

[REDACTED] The 2006 case subsequently settled in November of 2006.

12. On information and belief, Mentor Graphics lawsuit against EVE in 2006 was initiated in bad faith and without a reasonable basis, [REDACTED]

13. EVE announced the launch of the ZeBu-Server on July 14, 2009. EVE further promoted the ZeBu-Server in press releases and conferences in September 2009, October 2009, December 2009, January 2010, February 2010, March 2010, and continuing thereafter.

14. [REDACTED]

15. [REDACTED]

16. [REDACTED]

17. On or about July 20, 2010, Mentor Graphics filed an action in Japan against EVE's Japanese affiliate, based on alleged Japanese patent rights. On July 20, 2010, Mentor Graphics issued a press release on the action.



18. On August 16, 2010, Mentor Graphics filed the present case against EVE. In its First Amended and Supplemental Complaint, Mentor Graphics specifically identifies only one accused product: the ZeBu-Server. To date, Mentor Graphics has not identified any other accused products.

19. On August 16, 2010, Mentor Graphics issued a press release regarding the present case against EVE. Even though the complaint had identified only one EVE Product—the ZeBu-Server—as an accused infringing product, Mentor Graphics’ press release vaguely referred to “EVE products” as being the target of the lawsuit. The lawsuit was widely described in news organizations as targeting “EVE products,” just as described by Mentor Graphic’s press release.

20. On August 19, 2010, Mentor Graphics held an “earnings call.” In that call, after discussing expense control, bookings, revenue, gross margins, cash flow, balance sheet, and capital expenditures, Greg Hinckley of Mentor Graphics stated: “Let me now give you some detail on our recent legal action against EVE. For emulation technologies, Mentor has over 100 patents issued, and 40 more pending. These patents represent a significant investment by the company and an important asset of our shareholders. We have a net obligation to defend our investment in this intellectual property and to receive fair value for it. We offered to license our emulation patent portfolio to EVE, including U.S. patent number 6876962, an offer they declined. We have, therefore, commenced two actions against them. First, we filed a claim with the Japanese Customs Office. The Japanese Customs Office will review the claim, and if they find for us, will bar the importation of EVE products into Japan. We also filed a patent infringement suit in U.S. Federal Court in Oregon. The suit seeks damages and to bar their products manufacture and sale in the U.S.” This description again omitted reference to the

ZeBu-Server, and again referred to EVE's "products" as the target of the lawsuits.

21. Thereafter, Greg Hinckley went on to discuss forecasting revenue and operating income, among other things.

22. One analyst on the call asked the following question: "And one final one, if I could, on the EVE litigation. You know, back when you guys were engaged in litigation with, I guess, Quickturn, that was a fairly lengthy and quite expensive process. I mean, do you have any sense of what type of legal expenses we might expect to incur as this plays out over the next few quarters?"

23. Greg Hinckley responded to the question as follows: "The expenses over the next few quarters will be immaterial."

24. [REDACTED]

25. [REDACTED]

26. At the time Mentor Graphics filed its action in Japan against EVE's Japanese affiliate, and the present action against EVE for infringement of U.S. Patent No. 6876962, [REDACTED]

27. On December 17, the Japanese Customs Office rendered its decision to reject the action that Mentor Graphics had filed in Japan, on among other grounds, insufficiency.

28. On information and belief, Mentor Graphics action in Japan against EVE

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was initiated in bad faith and without a reasonable basis, [REDACTED]  
[REDACTED]

29. Mentor Graphics' allegations in its complaint in this case also contain insufficiencies, including its allegations relating to infringement and venue.

30. On information and belief, Mentor Graphics present action against EVE was initiated in bad faith and without a reasonable basis, [REDACTED]  
[REDACTED]

31. On information and belief, Mentor Graphics has engaged in a pattern of conduct undertaken in bad faith and without basis, [REDACTED]  
[REDACTED]

32. [REDACTED]  
[REDACTED]  
[REDACTED]

33. [REDACTED]  
[REDACTED]  
[REDACTED]

34. [REDACTED]  
[REDACTED]  
[REDACTED]

**Count II - Unfair Competition (CA)**

35. EVE realleges and incorporates by reference the preceding paragraphs.

36. Mentor Graphics' acts set forth herein constitute unfair competition prohibited by California Business and Professions Code sections § 17200 *et seq.*

37. Unless Mentor Graphics is restrained by appropriate injunctive relief pursuant to California Business and Professions Code section 17203, EVE will continue to suffer immediate and irreparable harm for which there is no adequate remedy at law.

**Jury Demand**

Defendants demand a trial by jury as to all issues so triable.

**Relief Requested by Defendants**

WHEREFORE, defendants pray that this Court enter judgment:

A. In favor of defendants, and against Mentor Graphics, thereby dismissing Mentor Graphics' First Amended and Supplemental Complaint in its entirety, with prejudice, with Mentor Graphics taking nothing by way of its claims;

B. Ordering Mentor Graphics to pay all costs incurred by defendants in this action;

C. That the Court find and declare that defendants have not infringed, contributorily infringed, or induced infringement of, and is not now infringing, contributorily infringing, or inducing the infringement of any valid claim of the '962 patent, directly or indirectly, under any subsection of 35 U.S.C. § 271;

D. Declaring that this is an exceptional case pursuant to 35 U.S.C. § 285 and

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ordering Mentor Graphics to pay defendants' reasonable attorney's fees incurred in this action;  
and

- E. Awarding defendants all other relief the Court deems just and proper.
- F. For damages sustained by defendants, according to proof at trial;

DATED this 25th day of October, 2011.

MILLER NASH

/s/ Dennis P. Rawlinson

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I hereby certify that I served the foregoing Defendants' Amended Answer and Counterclaims [Redacted Public Version] on:

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by the following indicated method or methods on the date set forth below:

- ☒ **CM/ECF system transmission.**
- ☐ **E-mail.** As required by Local Rule 5.2, any interrogatories, requests for production, or requests for admission were e-mailed in Word or WordPerfect format, not in PDF, unless otherwise agreed to by the parties.
- ☐ **Facsimile communication device.**
- ☐ **First-class mail, postage prepaid.**
- ☐ **Hand-delivery.**
- ☐ **Overnight courier, delivery prepaid.**

DATED this 25th day of October, 2011.

/s/ Justin C. Sawyer  
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*Attorneys for Defendants EVE-USA, Inc., and  
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Certificate of Service - Page 1 of 1